



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/157779

PRELIMINARY RECITALS

Pursuant to a petition filed May 21, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 11, 2014, at Milwaukee, Wisconsin.

The issues for determination are whether Petitioner was overissued FoodShare benefits and, if so, whether the overissuance was correctly calculated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Katherine May

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. The agency sent Petitioner 3 Notices of FoodShare Overissuance, all dated April 24, 2014. They informed Petitioner that she had been overissued FoodShare as follows:
 - Claim # [REDACTED] \$1649.00 9/1/11 through 8/31/12
 - Claim # [REDACTED] \$92.00 9/1/12 through 9/30/12
 - Claim # [REDACTED] \$800.00 3/1/13 through 9/30/13.
3. The basis for this FoodShare overissuance claim was client error. Petitioner did not report to the agency that her household income had exceeded 130% of the Federal Poverty Level (FPL).
4. Petitioner's FoodShare household size is 2. The 200% and 130% of the Federal Poverty Level (FPL) amounts, respectively, for a group of 2 during the time involved here were:
 - \$2430 / \$1579 from 10/1/09 to 9/30/11
 - \$2452 / \$1594 from 10/1/11 to 9/30/12
 - \$2522 / \$1640 from 10/1/12 to 9/30/13.
5. Petitioner's household is not an elderly, blind or disabled household as defined in FoodShare regulation.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

As Petitioner's household is not an elderly, blind or disabled (EBD) household, the FoodShare Wisconsin Handbook (FSH) states that she had to report income at the point that household income exceeded 130% of the FPL:

6.1.1.2 Change Reporting for All Other Food Units (Reduced Reporting)

All other food units [i.e., household's which do not have an EBD member] are only required to report if their total monthly gross income exceeds 130% (8.1.1) of the Federal Poverty Level (FPL) for their reported food unit size. This change must be reported by the 10th of the month following the month in which the total income exceeded 130% of the FPL.

As long as a food unit's total income is less than 130% of the FPL, a food unit need not report changes in income, assets, address changes, household composition, etc. This is known as "Reduced Reporting" requirements.

...
FSH, §6.1.1.2.

This follows Federal law which directs that States may:

"...require households with income that are assigned 6-month or longer certification periods to report only changes in the amount of gross monthly income exceeding 130% of the monthly poverty income guideline." 7 C.F.R. § 273.12(a)(vii); (emphasis added.)

Petitioner does not dispute that there could be an overpayment here but contends that that calculations here need to be redone because the worksheets accompanying the overpayment notices contain so many errors

that the calculations are not reliable. As examples, she points to the gross income limit, the earned income deduction, medical expenses and the standard deduction.

Petitioner is correct; there are errors in the gross income limit, the rows on the worksheet where deductions for earned income and the standard deduction are placed. There is \$35.25 of unearned income in some months for which there is no explanation. The standard deduction was \$149.00 not \$147.00 as of October 1, 2012. The shelter deduction amount is questionable for March 2013 and, perhaps, September 2011 yet in most other months it is the maximum. The earned income deduction should be calculated as follows:

...
In overissuance calculations, do not apply the 20% earned income disregard to earned income that was required to be reported but was not reported timely. Disregard income that was not previously reported and was not required to be reported due to reduced reporting requirements.

If expenses were reported correctly at the time of the overissuance, use those same expenses when calculating the overissuance. If not, then do not use the expenses in the calculation.

...
 FSH, § 7.3.2.1; also see 7 CFR 273.18(c)(1)B and 7 CFR 273.120d); emphasis added.

I do not know whether or not the final result changes here but the errors noted do not provide the requisite level of reliability necessary to sustain the amount of the overpayment involved here.

Finally, for Petitioner's review the calculation of eligibility and allotment levels is as follows. Once a household ***passes the gross income test the following deductions are applied*** (FSH, at § 4.6):

- (1) a standard deduction, 7 CFR § 273.9(d)(1);
- (2) an earned income deduction - which equals 20% of the household's total earned income (except as modified in overpayment calculations and as noted above), 7 CFR § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 CFR § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 CFR § 273.9(d)(4); and
- (5) shelter and utility expenses deduction – the utility allowance is a standard and the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 CFR § 273.9(d)(5). There is a cap on the shelter cost deduction unless a household has an elderly [60 or older], blind or disabled member. FSH, §§ 4.6.7.1 and 8.1.3.

CONCLUSIONS OF LAW

That the evidence does demonstrate that Petitioner was likely overissued FoodShare for some portion of the period involved here but the calculations of the amount of that overissuance are not reliable and the amount of the overissuance, if any, must be redetermined.

THEREFORE, it is

ORDERED

This matter is remanded to the agency with instructions to cease collection efforts for claim #s listed at Finding # 2. This must be done within 10 days of the date of this Decision.

The agency is further instructed to take the steps necessary to redetermine the amount of any FoodShare overissuance made to Petitioner's household for the time periods involved here. Upon completion of that redetermination of the amount of FoodShare overissuance for the time period involved, new notices and worksheets must be issued to Petitioner and she may again appeal. This must be done within 10 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 12th day of September, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 12, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability